

EXHIBIT 174

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE)
PRICE LITIGATION) MDL No. 1456
-----) Civil Action
This document relates to:) No. 01-12257-PBS
United States of America,)
ex. rel. Ven-a-Care of the)
Florida Keys, Inc.,) Hon. Patti Saris
vs.)
Abbott Laboratories, Inc.,) Magistrate Judge
CIVIL ACTION NO. 06-11337-PBS) Marianne Bowler

Videotaped 30(b)(6) deposition of DAVID S.
FISHMAN, called by the Plaintiffs for examination,
taken pursuant to notice, agreement and by the
provisions of the Rules of Civil Procedure for the
United States District Courts pertaining to the
taking of depositions, taken before DEBORAH HABIAN, a
Notary Public within and for the County of Cook,
State of Illinois, and a Certified Shorthand Reporter

30(b)(6) Abbott (Fishman, David S.)

March 12, 2008

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<p>1 of said State, at the offices of JonesDay, 77 West 2 Wacker Drive, 35th Floor, Chicago, Illinois, on the 3 12th day of March, 2008, at 8:34 a.m. 4 5 APPEARANCES: 6 7 U.S. DEPARTMENT OF JUSTICE 8 COMMERCIAL LITIGATION, FRAUD 9 BY: ANN ST. PETER-GRIFFITH, ESQ. 10 99 N.E. 4th Street 11 Miami, Florida 33132 12 (305) 961-9001 13 on behalf of the United States; 14 15 ANDERSON, LLC 16 BY: C. JARRETT ANDERSON, ESQ. 17 208 West 14th Street, Suite 3-B 18 Austin, Texas 78701 19 (512) 469-4549 20 on behalf of the Relator, Ven-a-Care; 21 22</p>	<p>1 INDEX OF EXAMINATIONS 2 3 WITNESS: DX CX RDX RCX 4 DAVID S. FISHMAN 5 EXAMINATION BY: 6 ANN ST. PETER-GRIFFITH, ESQ. 06 7 8 INDEX OF EXHIBITS PAGE 9 Exhibit Fishman 001, Sub 1 through Sub 40 10 ABT-DOJ 0394762 through 0395345 21 11 Exhibit Fishman 002, ABT-DOJ 0302503 12 Abbott Lab Ethics & Compliance Policy 147 13 Exhibit Fishman 003, Notice of Deposition 176 14 Exhibit Fishman 004, TXABT 49911 15 Proposal Analysis 260 16 Exhibit Fishman 005, TXABT 38152 17 Proposal Analysis 260 18 Exhibit Fishman 006, TXABT 38152 19 Injectable Comparison 269 20 Exhibit Fishman 007, ABT-DOJ 0233906 21 Catalog Price Adjustment 351 22</p>
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<p>1 APPEARANCES (continued): 2 3 JONES DAY 4 BY: TONI-ANN CITERA, ESQ. 5 77 West Wacker Drive 6 Chicago, Illinois 60601-1692 7 (312) 782-3939 8 on behalf of the Defendants. 9 10 ALSO PRESENT: 11 STEPHAN HOOG, VIDEOGRAPHER 12 HENDERSON LEGAL SERVICES 13 14 15 16 17 18 19 20 21 22</p>	<p>1 THE VIDEOGRAPHER: This is Stephan Hoog of 2 Legal Video Services, Inc., 205 West Randolph Street, 3 Chicago, Illinois. I'm the operator of this camera. 4 We're on record March 12th, 2008. The time is 8:34, 5 as indicated on video screen. 6 This is the videotaped deposition of 7 David Fishman being taken on behalf of Federal Rules 8 of Civil Procedure on behalf of the Plaintiff. We are 9 at 77 West Wacker Drive, Chicago, Illinois. This case 10 is captioned In Re: Pharmaceutical Industry Inc. AWP, 11 Case No. 01-12257-PBS. 12 Will the attorneys please identify 13 themselves for the video record? 14 MS. ST. PETER-GRIFFITH: Ann St. Peter-Griffith 15 from the United States Attorney's Office, Southern 16 District of Florida on behalf of the United States. 17 MR. ANDERSON: Jarrett Anderson, counsel for 18 the lawyer. 19 MS. CITERA Toni Citera, counsel for the 20 witness and for the Defendant from JonesDay. 21 THE VIDEOGRAPHER: The court reporter today is 22 Debbie Habian. Would you please swear in the witness?</p>

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<p>1 Q. Where did you search?</p> <p>2 A. I searched my files.</p> <p>3 Q. Anyone else's files?</p> <p>4 A. I talked to people who were -- would have</p> <p>5 been at Abbott at that time, and nobody had any</p> <p>6 documents other -- other than what I had.</p> <p>7 Q. Do you know why Abbott didn't retain a</p> <p>8 copy of its Code of Business Conduct --</p> <p>9 MS. CITERA: Objection to the form.</p> <p>10</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. (Continuing) -- for this period from '91</p> <p>13 through '93?</p> <p>14 A. I -- I didn't know that they didn't retain</p> <p>15 it.</p> <p>16 Q. Okay, but your search for that document</p> <p>17 only involved going to the Office of Ethics and</p> <p>18 Compliance and going to several people within the</p> <p>19 Legal Department, right, Miss Goldberg and Miss</p> <p>20 Sensinoff?</p> <p>21 A. Szazdanoff.</p> <p>22 MS. CITERA: Szazdanoff.</p>	<p>1 MS. CITERA: Objection to the form.</p> <p>2 THE WITNESS: No.</p> <p>3</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. Did you provide any legal advice</p> <p>6 concerning price reporting during this time period?</p> <p>7 MS. CITERA: Objection to form. Also I'm</p> <p>8 obviously going to caution you to reveal any --</p> <p>9 THE WITNESS: Right. To the extent --</p> <p>10 MS. CITERA: -- any of your discussions that</p> <p>11 are privileged.</p> <p>12 THE WITNESS: To the extent I did or didn't</p> <p>13 would be covered by attorney-client privilege.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. You can answer "yes" or "no" though. I'm</p> <p>16 not asking you about communication --</p> <p>17 A. What's the question?</p> <p>18 MS. ST. PETER-GRIFFITH: Can you read the</p> <p>19 question back, please?</p> <p>20 THE REPORTER: Sure.</p> <p>21 (Record read.)</p> <p>22 MS. CITERA: You can answer "yes" or "no."</p>
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<p>1 MS. ST. PETER-GRIFFITH: Szazdanoff.</p> <p>2 THE WITNESS: That is --</p> <p>3 MS. CITERA: Objection to form.</p> <p>4 THE WITNESS: That is correct.</p> <p>5</p> <p>6 BY MS. ST. PETER-GRIFFITH::</p> <p>7 Q. Okay, going back, what other</p> <p>8 responsibilities did you have for the time period of</p> <p>9 the fall of '95 through to 2004?</p> <p>10 A. As Commercial Attorney for each of those</p> <p>11 divisions, all the Commercial Attorneys were</p> <p>12 responsible for providing commercial legal services to</p> <p>13 those businesses, which ranged from drafting</p> <p>14 contracts, discussing issues that arose, legal matters</p> <p>15 that arose, strategic business matters that arose,</p> <p>16 buying companies, drafting licenses, distribution</p> <p>17 agreements, whatever -- again, the Commercial demands</p> <p>18 of the businesses was -- it was providing support for</p> <p>19 those divisions for the U.S. operations.</p> <p>20 Q. Did your responsibilities entail anything</p> <p>21 pertaining to price reporting or Abbott's relationship</p> <p>22 with the price reporting compendia?</p>	<p>1 THE WITNESS: Yes.</p> <p>2</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. What advice did you give?</p> <p>5 MS. CITERA: Objection, privileged.</p> <p>6 THE WITNESS: That's -- any advice I would have</p> <p>7 given would be covered by --</p> <p>8 MS. ST. PETER-GRIFFITH:: Toni, do you intend</p> <p>9 to -- does Abbott intend to rely upon an advice of</p> <p>10 counsel defense?</p> <p>11 MS. CITERA: I'm not going there. You ask this</p> <p>12 question every deposition.</p> <p>13 MS. ST. PETER-GRIFFITH: Yes, I did because I</p> <p>14 want your -- you to answer.</p> <p>15 MS. CITERA: I'm not making any stipulations or</p> <p>16 statements. You're here to ask questions of the</p> <p>17 witness. You're not here to ask questions of me.</p> <p>18 This -- your question is clearly privileged. He's not</p> <p>19 going to answer it.</p> <p>20</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. What other responsibilities did you have</p>

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<p>1 during this time frame?</p> <p>2 A. I think I've answered that question.</p> <p>3 Q. Well, I just want to make sure we've</p> <p>4 exhausted on your responsibilities. Is there any</p> <p>5 more --</p> <p>6 A. I've provided broad commercial support to</p> <p>7 the business -- the divisions that my group that I was</p> <p>8 in represented for U.S. operations.</p> <p>9 Q. Did you personally have any interaction</p> <p>10 with any price reporting compendia?</p> <p>11 A. No.</p> <p>12 Q. Did you personally have any interaction</p> <p>13 with anyone outside of Abbott concerning price</p> <p>14 reporting --</p> <p>15 MS. CITERA: Object to the form.</p> <p>16</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. -- or AWP?</p> <p>19 MS. CITERA: Outside the scope.</p> <p>20 THE WITNESS: AWP, no.</p> <p>21</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p>1 of Abbott's HPD, correct?</p> <p>2 MS. CITERA: I'm going to instruct you not to</p> <p>3 answer that.</p> <p>4 MS. ST. PETER-GRIFFITH: Why are you going to</p> <p>5 instruct him not to answer?</p> <p>6 MS. CITERA: It's privileged. You're asking</p> <p>7 him about what the advice pertained to. That's</p> <p>8 privileged.</p> <p>9 MS. ST. PETER-GRIFFITH: Well, did it pertain</p> <p>10 to litigation? That's not privileged, Toni.</p> <p>11 THE WITNESS: I would not be -- I would not</p> <p>12 provide information regarding litigation. We had a</p> <p>13 Litigation Department.</p> <p>14 MS. ST. PETER-GRIFFITH:</p> <p>15 Q. So --</p> <p>16 A. So I did not do that.</p> <p>17 Q. So everything you provided advice</p> <p>18 concerning then pertained to transactional matters or</p> <p>19 business matters within Abbott HPD?</p> <p>20 MS. CITERA: Objection, form, outside the</p> <p>21 scope.</p> <p>22 THE WITNESS: It's --</p>
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<p>1 Q. What about price reporting?</p> <p>2 MS. CITERA: Same objections.</p> <p>3 THE WITNESS: I provided -- I was -- I provided</p> <p>4 counsel -- what time frame are we talking about?</p> <p>5</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. This '95 through 2004 time period.</p> <p>8 A. I provided counsel for AMP and best price</p> <p>9 calculations.</p> <p>10 Q. Who did you provide that counsel to?</p> <p>11 A. HPD.</p> <p>12 Q. Who within HPD?</p> <p>13 A. Directly, the Contract Marketing</p> <p>14 organization.</p> <p>15 Q. And what advice did you give?</p> <p>16 MS. CITERA: I'm going to instruct you not to</p> <p>17 answer, privileged.</p> <p>18 THE WITNESS: Any advice that I would have give</p> <p>19 would have been privileged.</p> <p>20</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. But it pertained to the business operation</p>	<p>1 MS. CITERA: I'd Also instruct you not to</p> <p>2 answer that question based on the basis of privilege.</p> <p>3 MS. ST. PETER-GRIFFITH: It's -- he can answer</p> <p>4 "yes" or "no."</p> <p>5 THE WITNESS: You have the word "only" in</p> <p>6 there, and I don't think that's appropriate.</p> <p>7</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Okay, why not?</p> <p>10 A. Because I also provided -- you didn't</p> <p>11 include legal matters. You just said "transactional"</p> <p>12 and "business."</p> <p>13 Q. Okay, what do you consider legal matters?</p> <p>14 A. Interpretation of the law.</p> <p>15 Q. What laws did you interpret on behalf of</p> <p>16 HPD?</p> <p>17 MS. CITERA: Again, I'm going to instruct you</p> <p>18 not to answer -- or caution you not to reveal any</p> <p>19 privileged discussions. If you can answer the</p> <p>20 question without revealing any privileged discussions,</p> <p>21 you can answer it. I'm also going to object it's</p> <p>22 outside the scope.</p>

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<p>1 THE WITNESS: You're asking -- from the period</p> <p>2 of '95 through 2004 which laws did I give legal advice</p> <p>3 on?</p> <p>4</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Right.</p> <p>7 A. I think I -- I think the question is too</p> <p>8 broad to answer. I don't know every law that I gave</p> <p>9 legal advice on.</p> <p>10 Q. Did you provide advice concerning -- on</p> <p>11 statutes pertaining to Medicaid or Medicare fraud and</p> <p>12 abuse?</p> <p>13 MS. CITERA: Same objection, same instruction.</p> <p>14 THE WITNESS: Yes.</p> <p>15</p> <p>16 BY MS. ST. PETER-GRIFFITH::</p> <p>17 Q. Okay, did you provide advice concerning</p> <p>18 the antikick -- federal antikickback statute?</p> <p>19 MS. CITERA: Same objection, same instruction.</p> <p>20 THE WITNESS: Yes.</p> <p>21</p> <p>22</p>	<p>1 THE WITNESS: We -- I did not.</p> <p>2</p> <p>3</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. What about any other state Medicaid fraud</p> <p>6 or abuse statute?</p> <p>7 MS. CITERA: Same objection, same instruction.</p> <p>8 THE WITNESS: Specifically any particular</p> <p>9 state, no.</p> <p>10</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. How about a grouping of states?</p> <p>13 MS. CITERA: Same objection, same instruction.</p> <p>14 THE WITNESS: We gave advice from -- on the --</p> <p>15 I -- I shouldn't say we. I -- I can't testify as to</p> <p>16 what my colleagues specifically would have given in</p> <p>17 any given instance. I provided advice in the broader</p> <p>18 framework of the federal statutory scheme.</p> <p>19</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. And what is -- what in your background</p> <p>22 provided you with the background to provide that</p>
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<p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Did you provide advice concerning the</p> <p>3 Federal False Claims Act?</p> <p>4 MS. CITERA: Same objection, same instruction.</p> <p>5 THE WITNESS: Yes.</p> <p>6</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Did you provide advice concerning Medicare</p> <p>9 or Medicaid regulations?</p> <p>10 MS. CITERA: Same objection, same instruction.</p> <p>11 THE WITNESS: How is that differnt from what</p> <p>12 you described previously?</p> <p>13</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Well, now I'm talking about regulations.</p> <p>16 A. Some of -- certain of the regulations,</p> <p>17 safe harbors.</p> <p>18 Q. What about State False Claims Act, did you</p> <p>19 provide any advice concerning any State False Claims</p> <p>20 Act?</p> <p>21 A. Specifically, we --</p> <p>22 MS. CITERA: Same objection, same instruction.</p>	<p>1 advice?</p> <p>2 MS. CITERA: Object to the form, outside the</p> <p>3 scope.</p> <p>4 THE WITNESS: I learned it while I became part</p> <p>5 of Abbott in-house counsel.</p> <p>6</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Okay, and who did you learn it from?</p> <p>9 A. My colleagues.</p> <p>10 Q. Which colleagues?</p> <p>11 MS. CITERA: Again, outside the scope.</p> <p>12 THE WITNESS: Honey Lynn Goldberg, Brian</p> <p>13 Taylor, Mark Habeberger, Maureen McShane, Daphne Pals,</p> <p>14 'Sil Porembski --</p> <p>15</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. When you --</p> <p>18 A. What time -- what time frame are we</p> <p>19 talking about?</p> <p>20 Q. '95 through 2004.</p> <p>21 A. That -- those were just people from in an</p> <p>22 earlier time frame. I mean did you want -- we had</p>

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<p>1 dozens of lawyers in Abbott that we worked</p> <p>2 collaboratively together with. I would have learned</p> <p>3 from them as well. Do you want -- do you want the</p> <p>4 names of those people as well?</p> <p>5 Q. Sure.</p> <p>6 A. Tejal Vakaharia, Kate Collins, Peter</p> <p>7 Petros, Selena Thomas Lisa Edmonds, who got married</p> <p>8 and became Lisa Lee, Daniel Lawton, Mike Johannasen,</p> <p>9 Erin Kraft, Brian Smith, Simi Chabria, Shan Bhati,</p> <p>10 Michael Elm.</p> <p>11 Q. Is there a gentleman whose first name</p> <p>12 began with an A?</p> <p>13 MS. CITERA: Whose first name began?</p> <p>14 MS. ST. PETER-GRIFFITH: Began -- or, I'm sorry,</p> <p>15 whose second name -- whose last name began with an A.</p> <p>16 THE WITNESS: Jim Albrecht, yes. He retired</p> <p>17 soon after I got involved.</p> <p>18</p> <p>19 BY MS. ST. PETER-GRIFFITH:</p> <p>20 Q. Okay. Sir, did you participate -- during</p> <p>21 this '95 through 2004 time period when you were</p> <p>22 providing legal advice and working on commercial</p>	<p>1 Ann, as I said before, he is here to</p> <p>2 testify about the -- subject to our objections and</p> <p>3 limitations, the doc -- the topics that you have</p> <p>4 noticed. He is not here to testify about legal advice</p> <p>5 that the -- that was given by lawyers to the company.</p> <p>6 MS. ST. PETER-GRIFFITH: And you don't intend</p> <p>7 to rely upon an advice of counsel defense, right?</p> <p>8 MS. CITERA: I am not answering that.</p> <p>9 MR. ANDERSON: Well, Toni, regardless, the</p> <p>10 whole premise of the deposition is to learn of the</p> <p>11 practices at Abbott regarding the noticed topics. So</p> <p>12 we do need that testimony.</p> <p>13 MS. CITERA: Well, he is subject to the</p> <p>14 privilege. I mean we are not going to disclose</p> <p>15 privileged matters. That's -- we said that in our</p> <p>16 objections, we said that in our limitations. It's not</p> <p>17 going to happen. You're not entitled to it.</p> <p>18 MR. ANDERSON: Listen, we're not talking about</p> <p>19 the advice. We're saying we need the information</p> <p>20 about the practices.</p> <p>21 MS. CITERA: But she's asking for advice that</p> <p>22 was given, I believe -- I mean we can reread the</p>
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<p>1 matters with HPD and -- commercial and legal matters</p> <p>2 with HPD, did you help formulate any strategies</p> <p>3 concerning compliance with -- HPD's compliance with</p> <p>4 federal or state Medicare or Medicaid statutes --</p> <p>5 MS. CITERA: Objection to the form.</p> <p>6</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. -- or regulations?</p> <p>9 A. Indirectly.</p> <p>10 Q. How -- what did you do indirectly?</p> <p>11 MS. CITERA: And I would just caution you not</p> <p>12 to reveal any privileged conversations, discussions,</p> <p>13 et cetera.</p> <p>14 MS. ST. PETER-GRIFFITH: I will put on the</p> <p>15 record that I object to that instruction simply</p> <p>16 because it's -- you know, it's not privileged for the</p> <p>17 United -- the United States has every right to</p> <p>18 discover the business practices and advice concerning</p> <p>19 business practices within Abbott.</p> <p>20 MS. CITERA: You do not have a right to</p> <p>21 discover legal advice that is given to the</p> <p>22 corporation.</p>	<p>1 question, but as I recall, it was something to do with</p> <p>2 advice given on the strategy. That's clearly</p> <p>3 privileged.</p> <p>4 MR. ANDERSON: Okay, but --</p> <p>5 MS. ST. PETER-GRIFFITH: No, it's not</p> <p>6 privileged, Toni.</p> <p>7 MS. CITERA: I disagree.</p> <p>8 MS. ST. PETER-GRIFFITH: It pertains to</p> <p>9 business --</p> <p>10 MS. CITERA: I disagree.</p> <p>11 MS. ST. PETER-GRIFFITH: Okay, then we're going</p> <p>12 to come -- when we come back here, it's going to be at</p> <p>13 Abbott's expense.</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Sir, what --</p> <p>16 MS. CITERA: If he can answer it without</p> <p>17 providing privileged testimony -- because I didn't</p> <p>18 instruct him not to -- I instructed him not to reveal</p> <p>19 any privileged testimony.</p> <p>20 If there are things that you can</p> <p>21 provide that are not privileged, you can answer that</p> <p>22 question. If you need to take a break and ask me, we</p>

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<p>1 can do that.</p> <p>2 But he's not going to provide</p> <p>3 privileged discussions, conversation. With that</p> <p>4 advice.</p> <p>5 MS. ST. PETER-GRIFFITH: Can you read back the</p> <p>6 question?</p> <p>7 MS. CITERA: Want to read back the question.</p> <p>8 THE WITNESS: Is there an outstanding question?</p> <p>9 THE REPORTER: Okay, the last question was,</p> <p>10 "What did you do indirectly?" Would you like me to</p> <p>11 read the one before just for clarification?</p> <p>12 THE WITNESS: Please.</p> <p>13 THE REPORTER: Okay.</p> <p>14 (Record read.)</p> <p>15 MS. CITERA: So with that instruction in mind.</p> <p>16 THE WITNESS: I believe that answering the</p> <p>17 question would require me to provide privileged</p> <p>18 information. I did participate. What I did in that</p> <p>19 participation is asking me to disclose privileged</p> <p>20 information.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Well, did you exclusively have</p>	<p>1 Q. Okay, what about the second one?</p> <p>2 A. We -- I would have -- we were -- the Legal</p> <p>3 Division was current. We kept current through</p> <p>4 publications, periodicals, alerts that came from law</p> <p>5 firms and communications with external counsel on the</p> <p>6 current state of the law.</p> <p>7 Q. What law firms did you obtain information</p> <p>8 from?</p> <p>9 A. On what subject matter?</p> <p>10 Q. Medicare/Medicaid fraud abuse.</p> <p>11 A. I'm sorry, the question is just very</p> <p>12 broad, so... I personally worked with Reed Smith in</p> <p>13 Washington, D.C.</p> <p>14 Q. Any other law firms?</p> <p>15 A. Mayer, Brown.</p> <p>16 Q. Any other law firms?</p> <p>17 A. We're talking '95 to 2004?</p> <p>18 Q. Yes.</p> <p>19 A. Arnold & Porter.</p> <p>20 Q. Anybody else?</p> <p>21 A. Not that I can think of.</p> <p>22 Q. In formulating its policies and</p>
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<p>1 communications?</p> <p>2 MS. CITERA: What do you mean by that?</p> <p>3 THE WITNESS: I don't understand that question.</p> <p>4 MS. ST. PETER-GRIFFITH: Meaning -- I want to</p> <p>5 know what he did. I'm not -- I don't want to discover</p> <p>6 necessarily -- I do want to discover the</p> <p>7 communications, and I think your instruction's</p> <p>8 improper.</p> <p>9</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. Beyond communications, what did you do?</p> <p>12 MS. CITERA: I'm going to object to the form.</p> <p>13 THE WITNESS: I don't understand what would</p> <p>14 exist beyond communications.</p> <p>15</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Well, did you formulate or draft any</p> <p>18 policies or do any -- do any research --</p> <p>19 A. Yes.</p> <p>20 Q. -- In furtherance of any policies?</p> <p>21 A. Yes. There's two questions. To the first</p> <p>22 one, yes.</p>	<p>1 procedures, did Abbott rely upon any materials from</p> <p>2 outside counsel in formulating it -- how it was going</p> <p>3 to comply with federal and state Medicare and Medicaid</p> <p>4 fraud and abuse statutes?</p> <p>5 MS. CITERA: Objection to the form.</p> <p>6 THE WITNESS: We certainly consulted with</p> <p>7 outside counsel regarding those matters.</p> <p>8</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Okay, but you just referenced before that</p> <p>11 you reviewed materials from them; is that fair?</p> <p>12 MS. CITERA: Objection to form.</p> <p>13 THE WITNESS: Your earlier question was which</p> <p>14 law firms did I consult, and previously the answer was</p> <p>15 which -- what -- what law -- what did I -- what did we</p> <p>16 do to keep current with the law basically, and so we</p> <p>17 would have received publications from law firms that</p> <p>18 we didn't necessarily do business with as -- probably</p> <p>19 as part of their marketing program.</p> <p>20</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Did you consult with them concerning</p>

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<p>1 2 BY MS. ST. PETER-GRIFFITH: 3 Q. And you didn't do that, you testified, 4 because you thought they were privileged? 5 A. Any communi -- I believe any communication 6 that would have subsequently occurred, had a call like 7 that been made, would be privileged. 8 Q. What advice did Abbott's in-house Legal 9 Department give concerning AWP, spread or spread 10 marketing? 11 MS. CITERA: Objection to form. 12 THE WITNESS: That would clearly be -- 13 MS. CITERA: Privileged. 14 THE WITNESS: -- privileged. 15 MS. ST. PETER-GRIFFITH: Why is it privileged? 16 It goes to -- 17 MS. CITERA: It's privileged. 18 THE WITNESS: You asked me about legal advice. 19 MS. CITERA: Give me a break. It's privileged. 20 MS. ST. PETER-GRIFFITH: Okay, are you going to 21 be asserting an advice of counsel defense in this 22 case?</p>	<p>1 people, not just field sales. 2 Q. Anything else? 3 A. I talked to him about the -- kind of the 4 administrative operational process that he would have 5 been involved in regarding the OEC policies and then 6 the procedures that followed. 7 Q. Anything else? 8 A. I think he talked about the Safeguarding 9 Trust CD as well, and that would have -- I mean I may 10 be implying that that would have been something he was 11 involved in. I don't recall. 12 Q. Would that again be more of the technical 13 aspects as opposed to the substantive? 14 A. Correct. 15 Q. Okay, what about -- 16 A. Rick is not an attorney. 17 Q. What about Ms. Szazdanoff, what 18 communications did you have with her? 19 A. I had a phone conversation with her. We 20 reviewed her tenure, her varied tenure at Abbott. 21 She'd had several different positions over time, and 22 we talked about those positions and how she landed in</p>
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<p>1 MS. CITERA: Oh, God. 2 MS. ST. PETER-GRIFFITH: Are you, Toni? 3 MS. CITERA: I'm not going there, Ann. It's 4 privileged. 5 MS. ST. PETER-GRIFFITH: I'm asking -- 6 MS. CITERA: I'm not going there. It's 7 completely privileged. We're not going there. 8 MS. ST. PETER-GRIFFITH: Okay, I really think 9 you need to answer the question today because -- 10 MS. CITERA: I'm not answering that question. 11 MS. ST. PETER-GRIFFITH: Okay, well, when we 12 come back here, it's going to be at Abbott's expense. 13 MS. CITERA: You know what? You've already 14 asked for a second day. So, you know... 15 16 BY MS. ST. PETER-GRIFFITH: 17 Q. What else did you learn from Mr. Matejh? 18 A. We talked about LERN, we talked about the 19 audience, the original audience. He advised me that 20 as -- as the system became more fulsome and from an 21 operational standpoint they expanded -- they expanded 22 the audience to include all sales and marketing</p>	<p>1 OEC and what her responsibilities were as Senior 2 Counsel within OEC reporting to Charlie Brock when 3 they reported in through the General Counsel. We 4 talked about the activities OEC and Legal engaged in 5 when the Pharma Code came out in terms of operating -- 6 operating guidelines, operating -- 7 Q. When -- oh, when was that, I'm sorry? 8 A. Summer of 2002, I believe. 9 Q. And when you say "Pharma," do you mean -- 10 A. I mean Pharma Research, the organization 11 Pharma. 12 Q. Okay, just wanted to make sure what -- 13 A. No, I've used it twice. I've used it 14 differently. I understand. 15 Q. Okay. 16 A. And then I would have talked to her about 17 the specific role she played in marshalling the 18 policies and procedures in 2003, 2004 and beyond. 19 Q. And what did she tell you about that? 20 A. Which? The last -- the last item? 21 Q. The last -- yeah. 22 A. She told me that, as Charlie's kind of</p>

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<p>1 Q. Okay, is there anything else you can 2 recall about your discussions with Ms. Szazdanoff? 3 A. We talked about the Exceptions Review 4 Committee within the divisions, which addressed 5 something that would have come from -- predominantly 6 from Finance review of expense reports where people, 7 mostly sales reps, submitting sales expense reports 8 would have been raising issues as to whether or not 9 they were adhering to the procedures, policies and 10 procedures. 11 Q. Anything else? 12 A. No. 13 Q. How long did you speak with 14 Ms. Szazdanoff? 15 A. It was scheduled the same. I recall we -- 16 it didn't last -- it was scheduled late in the day, 17 and it didn't last as long -- I was glad it didn't 18 last until 6:00. 19 Q. Okay, when you say it was late in the 20 day -- 21 A. 5 -- it was a 5 to 6 call, and I was glad 22 it didn't last all the way to 6. So...</p>	<p>1 Brock, I couldn't have placed it in time, whether it 2 was 2000 or '99 or 2001. I could have given 3 general -- general information, but in talking about 4 the subject matter for this deposition would have 5 identified people who could fill in specific gaps that 6 I had in facts. 7 Q. Do you recall who you identified as people 8 you might want to talk to to fill in those gaps? 9 A. I would have mentioned Charlie, I would 10 have mentioned Katherine, I would have mentioned 11 Ginny, I would have mentioned Rick Matejh, and I would 12 have mentioned Honey Lynn, I would have mentioned 13 Cliff, I would have mentioned Mike. I mean I -- I 14 mean all of them. I mean it's -- it was more of a -- 15 it was kind of an interactive process. So I don't 16 have precise recollection of -- of who I didn't 17 identify. 18 Q. Okay, is there anyone that you -- in 19 preparation for today's deposition that you thought 20 you should have spoken with but didn't? 21 A. Nobody that I can think of. 22 Q. What did you -- what were your</p>
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<p>1 Q. Did you just sit down one day and call all 2 these people? 3 A. No, these were -- these were over periods 4 of time. 5 Q. Who set up the calls? 6 A. I believe our Litigation Group. 7 Q. And did you choose who you were going to 8 speak with or was that -- were these individuals, the 9 list of individuals chosen for you? 10 A. I'm sure the conversation was privileged. 11 It was conversations with counsel. It was through 12 counsel. It was through conversations with counsel 13 identifying people who could fill in areas that I 14 wouldn't necessarily have as much personal knowledge 15 about. 16 Q. Did you independently request to speak 17 with anybody not suggested by counsel? 18 A. In reviewing -- in reviewing the subject 19 matter, I would have answered, I don't know that, but 20 so and so probably does. So the list was probably 21 derived mostly by that. For instance, you know, when 22 was OEC created, I -- prior to talking to Charlie</p>	<p>1 communications with Mr. Fischer? 2 A. I spoke with Matt for far less time than 3 an hour. We probably spoke for ten minutes. 4 Q. Okay. 5 A. And it was to ask him about his 6 recollection of conversations and activ -- and a 7 series of conversations and interactions he would have 8 had with Mike Tootell. 9 Q. Okay, and what were the -- those 10 conversations and communications? 11 A. It had to do with testimony or -- 12 deposition testimony that Mike gave regarding his 13 concern about AWP. 14 Q. Where did you learn about that testimony? 15 A. From counsel. 16 Q. Did you review it? 17 A. I did not. 18 Q. Okay. And what did you learn about that 19 conversation between Mr. Fischer and Mr. Tootell? 20 A. What I learned from Matt was that Matt did 21 not recall any specific conversation with Mike where 22 the -- a matter about AWP was raised in any alarming,</p>

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<p>1 concerning way.</p> <p>2 Part of -- Mike reported to Matt, and</p> <p>3 part of their collective function was -- was the broad</p> <p>4 pricing aspects for -- for the Ross business. So he</p> <p>5 said he would have had general conversations about AWP</p> <p>6 with Matt -- or with Mike, and he also recalled that,</p> <p>7 to the extent there was ever any thing that was of</p> <p>8 concern about his area, pricing generally, that he</p> <p>9 would not -- he, as the manager of the department,</p> <p>10 would not have made final decisions, he would have</p> <p>11 consulted Brian Taylor in the Legal Department.</p> <p>12 Q. Okay, and what did you learn about</p> <p>13 consultations with Mr. Taylor, if any?</p> <p>14 A. Any conversations they may have had would</p> <p>15 be privileged.</p> <p>16 MS. ST. PETER-GRIFFITH: Any conversations</p> <p>17 about pricing and to business decisions concerning</p> <p>18 pricing --</p> <p>19 THE WITNESS: Yes.</p> <p>20 MS. ST. PETER-GRIFFITH: -- is that your</p> <p>21 instruction?</p> <p>22 THE WITNESS: Yes, if they're seeking</p>	<p>1 information concern that?</p> <p>2 MS. CITERA: Okay, first of all, he spoke to,</p> <p>3 you know, Mr. Taylor and asked him the questions. So</p> <p>4 you can get to that. Not Mr. Taylor. Mr. --</p> <p>5 MS. ST. PETER-GRIFFITH: Fischer.</p> <p>6 MS. CITERA: -- Fischer. No, no --</p> <p>7 THE WITNESS: Mr. Taylor.</p> <p>8 MS. CITERA: -- Taylor. And he spoke to</p> <p>9 Ms. Pence-Levy and he spoke to Mr. Berman and asked if</p> <p>10 Mr. Tootell raised those concerns. So you can ask</p> <p>11 about that.</p> <p>12 What he has just said is that any</p> <p>13 conversations that Mr. Taylor would or would not have</p> <p>14 had would have been privileged. So I guess, you</p> <p>15 know -- I don't see where you're not getting what you</p> <p>16 noticed from -- what you noticed up for, and, you</p> <p>17 know, obviously, subject to our limitations and</p> <p>18 objections.</p> <p>19 You wanted to know whether it was --</p> <p>20 whether --</p> <p>21 MR. ANDERSON: Well, we're going to continue</p> <p>22 this.</p>
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<p>1 legal counsel --</p> <p>2 MS. CITERA: If they were seeking legal counsel</p> <p>3 from Mr. Taylor, absolutely.</p> <p>4 MS. ST. PETER-GRIFFITH: Are you intending to</p> <p>5 rely upon advice of counsel in -- as your defense in</p> <p>6 this case?</p> <p>7 MS. CITERA: I'm not answering that. I'm not</p> <p>8 answering that.</p> <p>9 MR. ANDERSON: In fairness, Toni, I will say</p> <p>10 that we're here on a 30(b)(6) witness. We're not here</p> <p>11 in Mr. Fishman's personal capacity as an attorney.</p> <p>12 And the -- when this privilege is being asserted</p> <p>13 offensively, it is thwarting our ability to discover</p> <p>14 the policies and practices and the compliance</p> <p>15 therewith by Abbott, and the whole premise of the</p> <p>16 deposition is the compliance efforts by Abbott.</p> <p>17 If Mr. Tootell, for instance, to make</p> <p>18 it very specific to this line of questions, posed an</p> <p>19 inquiry to counsel, which he's testified he did, about</p> <p>20 AWP and spread concerns that Mr. Tootell had, and that</p> <p>21 was passed along to Mr. Taylor, if not through this</p> <p>22 witness, how could we ever discover Abbott's</p>	<p>1 MS. ST. PETER-GRIFFITH: We'll continue.</p> <p>2 MR. ANDERSON: Yeah.</p> <p>3 MS. ST. PETER-GRIFFITH: Yeah.</p> <p>4 MR. ANDERSON: But I'm just saying that, as a</p> <p>5 general proposition, the witness is not here and in</p> <p>6 his personal capacity as an attorney.</p> <p>7 MS. ST. PETER-GRIFFITH: As a lawyer.</p> <p>8 MR. ANDERSON: He's here as the corporate</p> <p>9 representative, and merely because he has an attorney</p> <p>10 background does not make any of his testimony on</p> <p>11 behalf of an organization more or less privileged.</p> <p>12 MS. CITERA: I think you're conflating the two</p> <p>13 because I mean here's the problem. You guys are here</p> <p>14 to testify -- you're here to talk to him about these</p> <p>15 topics, okay? And you are now asking about advice</p> <p>16 that Legal would have gave. It doesn't matter if he</p> <p>17 was a lawyer or not. That's privileged. It's --</p> <p>18 MS. ST. PETER-GRIFFITH: And it's our</p> <p>19 contention that it's not --</p> <p>20 MS. CINTERA: Well, I disagree.</p> <p>21 MS. ST. PETER-GRIFFITH: -- because it bears on</p> <p>22 the business practices.</p>

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<p>1 had with Mr. Fischer, did you discuss anything else?</p> <p>2 A. No.</p> <p>3 Q. What were your discussions with Mr. Taylor</p> <p>4 in preparation for today's deposition?</p> <p>5 A. My discussions with Mr. Taylor centered on</p> <p>6 two separate matters.</p> <p>7 Q. Okay.</p> <p>8 A. First, the time frame '91 through '95</p> <p>9 where I was not providing commercial --</p> <p>10 Q. Okay.</p> <p>11 A. -- legal advice and he was in -- and I</p> <p>12 actually replaced him. He went to Columbus. So I</p> <p>13 talked to him about what his recollections were about</p> <p>14 compliance activities coming -- emanating from the</p> <p>15 Legal Department.</p> <p>16 And then separately, I talked -- not</p> <p>17 separate -- the same conversation, but on a separate</p> <p>18 subject matter would have talked -- talked with him</p> <p>19 about conversations that he would have had with Matt</p> <p>20 and Mike about AWP, whether the -- he had</p> <p>21 conversations -- whether Mike -- whether he</p> <p>22 specifically recalled Mike raising a particular</p>	<p>1 A. No.</p> <p>2 Q. Did you discuss any particular practice?</p> <p>3 A. No.</p> <p>4 Q. Did you discuss with Mr. Taylor at all the</p> <p>5 Home Infusion Business Unit and whether that business</p> <p>6 model complied with Medicare or Medicaid fraud and</p> <p>7 abuse statutes?</p> <p>8 A. I did not talk to him about Home Infusion.</p> <p>9 Q. Did you talk to anybody about Home</p> <p>10 Infusion?</p> <p>11 A. I talked with Mike Sellers and Ginny</p> <p>12 Tobiason.</p> <p>13 Q. Ooh. Okay, we didn't go over that when we</p> <p>14 discussed Mr. Sellers and Ms. Tobiason. What did you</p> <p>15 discuss with Mr. Sellers about Home Infusion?</p> <p>16 A. We talked -- he described that there was a</p> <p>17 separate sales force between HBS and Alternate Site in</p> <p>18 which -- and that there was a separate Contract</p> <p>19 Marketing organization within Home Infusion.</p> <p>20 Q. Okay, anything else?</p> <p>21 A. No.</p> <p>22 Q. Did you discuss at all concerns about the</p>
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<p>1 concern about AWP.</p> <p>2 Q. Okay, did he recall having conversations</p> <p>3 with Matt and Mike?</p> <p>4 A. He did not re -- he did not recall having</p> <p>5 a conversation with Matt or with Mike where AWP was</p> <p>6 raised in -- in a concerning manner.</p> <p>7 Q. Did he recall having any conversations</p> <p>8 with Matt or Mike about AWP in general?</p> <p>9 A. He did not have specific recollection</p> <p>10 about AWP.</p> <p>11 Q. About AWP in the conversation?</p> <p>12 A. In the conversation.</p> <p>13 Q. Okay. What else did you discuss with</p> <p>14 Mr. Taylor about the '91 through '95 commercial</p> <p>15 advice?</p> <p>16 A. I confirmed with him that the practice</p> <p>17 regarding training for the business divisions was</p> <p>18 generally consistent with the practice that I was</p> <p>19 familiar with post '95.</p> <p>20 Q. And was it?</p> <p>21 A. It was.</p> <p>22 Q. Anything else?</p>	<p>1 business model being violative of any federal or state</p> <p>2 law?</p> <p>3 A. No.</p> <p>4 MS. CITERA: Objection to the form.</p> <p>5</p> <p>6 BY MS. ST. PETER-GRIFFITH:</p> <p>7 Q. What did you discuss with Ms. Tobiason</p> <p>8 about Home Infusion?</p> <p>9 A. We talked about the difference -- we</p> <p>10 talked about the proportionality between HBS and Alt</p> <p>11 Site as a -- as a structural piece of HPD and how the</p> <p>12 Alternate Site and Home Infusion business was a</p> <p>13 significantly small piece of the -- of the overall</p> <p>14 business. We talked about how the HBS business sales</p> <p>15 force called on purchasing and pharmacy purchasing</p> <p>16 elements within the hospital market and that the</p> <p>17 billing aspect -- the billing procedures within</p> <p>18 hospitals was a DRG-based process --</p> <p>19 Q. Okay.</p> <p>20 A. -- and that AWP would have had no --</p> <p>21 played no role whatsoever in that.</p> <p>22 Q. Anything else that you recall about your</p>

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<p>1 evaluate whether or not the Home Infusion consignment 2 arrangements and revenue share contracts were in 3 compliance with federal and state Medicare and 4 Medicaid fraud and abuse statutes and regulations? 5 MS. CITERA: Objection, asked and answered. 6 THE WITNESS: Abbott would have -- Abbott, the 7 Legal Department, obtained, reviewed, read statutes 8 directly and regulations and would have consulted with 9 outside counsel on a case-by-case basis. We would 10 have educated ourselves through periodicals and other 11 advisory documents that would have been presented from 12 external sources. 13 MS. ST. PETER-GRIFFITH: Okay, we will pick up 14 on this after the break, but there's five minutes left 15 on the tape. 16 MS. CITERA: Okay. 17 MS. ST. PETER-GRIFFITH: So why don't we take a 18 break. 19 THE VIDEOGRAPHER: Going off the record at 1:19 20 a.m. -- 11:19 a.m. 21 (Recess taken.) 22 THE VIDEOGRAPHER: Beginning of Videotape No. 3</p>	<p>1 the same question, but the business unit would not 2 have -- should not have made -- reached legal 3 conclusions about any of its practices. 4 As a general rule, again, Abbott had 5 business -- a Code of Business Conduct. All Abbott 6 employees were obligated to adhere and comply with all 7 laws including federal healthcare laws, so they had an 8 overriding standard to adhere to. 9 What they would have done to ensure 10 compliance, is that the question? 11 12 BY MS. ST. PETER-GRIFFITH: 13 Q. Yes. 14 A. As managers, managers had responsibility 15 to supervise its employees. So they would have been 16 working with employees, making sure they adhered -- 17 they adhered to -- to the laws. 18 Q. Okay, but my question is particular to the 19 Home Infusion Business Unit model of consignment 20 arrangements. 21 A. Yes, my answer would have to be I'm not 22 aware of -- what I described would be applicable to</p>
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<p>1 in the deposition of Mr. Fishman. We're back on the 2 record at 11:30 a.m. 3 4 BY MS. ST. PETER-GRIFFITH: 5 Q. Mr. Fishman, I'm going to get back on task 6 here a little bit. I've got a couple of follow-up 7 questions though. 8 Prior to the break, we were 9 discussing what Abbott did to confirm that its Home 10 Infusion Business Unit basically business model of 11 consignment or risk sharing agreements complied with 12 state and federal Medicare and Medicaid laws. 13 Other than work done within the Legal 14 Department, did Abbott's Home Infusion Business Unit 15 do anything else to verify whether or not its Home 16 Infusion business model of consignment arrangements or 17 risk share contracts complied with or violated state 18 and federal Medicare/Medicaid fraud and abuse 19 statutes? 20 MS. CITERA: Objection to the form. 21 THE WITNESS: I'm not sure that was the same 22 question you asked before, but -- or a follow-up to</p>	<p>1 all business units. 2 Q. Okay. 3 A. And I'm not aware that the Home 4 Business -- Home Infusion would have done anything 5 over and above that. 6 Q. Okay, so ultimately then, the -- the 7 compliance check, if you will, on whether or not this 8 particular business model was in compliance with 9 federal and state Medicare/Medicaid fraud and abuse 10 statutes, that would rest with the in-house counsel? 11 MS. CITERA: Objection to form. 12 THE WITNESS: The determination of compliance, 13 the legal evaluation of facts as applied against 14 regulations and laws would have been a legal 15 determination. Again, once the legal determination, 16 when given and communicated to the business, 17 compliance with that determination would be everyone's 18 obligation. 19 20 BY MS. ST. PETER-GRIFFITH: 21 Q. Okay. But in terms of doing that initial 22 evaluation, that would be done within the Legal Unit?</p>

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<p>1 A. It should have been.</p> <p>2 Q. Okay. And is that -- that's true for all</p> <p>3 of HPD?</p> <p>4 A. That's true for all of Abbott.</p> <p>5 Q. Okay. Another clean-up matter that I want</p> <p>6 to get to --</p> <p>7 A. Okay.</p> <p>8 Q. -- is, sir, you referred earlier to an OEC</p> <p>9 policy with Charles Brock's name on it. I'd like to</p> <p>10 mark this as Exhibit 2 and ask you, sir, if this is</p> <p>11 the policy you were talking about?</p> <p>12 MS. CITERA: Do you have my copy? I mean --</p> <p>13 oh, I gave you four copies, right.</p> <p>14 MS. ST. PETER-GRIFFITH: Here you go.</p> <p>15 MS. CITERA: Thank you.</p> <p>16 THE WITNESS: This is the policy I was</p> <p>17 referring to, yes.</p> <p>18 MS. ST. PETER-GRIFFITH: Okay, can we mark that</p> <p>19 as Exhibit 2?</p> <p>20 THE WITNESS: Yeah.</p> <p>21 MS. ST. PETER-GRIFFITH: Could you just give</p> <p>22 that to --</p>	<p>1 in tandem from the Legal organization to issue the</p> <p>2 operating guidelines, that each division had its own.</p> <p>3 We were working to maintain consistency and</p> <p>4 uniformity, where appropriate. And he was supporting</p> <p>5 Ross. I was tasked with supporting and -- Lynn</p> <p>6 Boehringer and I were tasked with supporting HPD. So</p> <p>7 we worked -- we talked about having worked together to</p> <p>8 do -- to issue those guidelines back in '99.</p> <p>9 Q. Okay, in '99?</p> <p>10 A. Correct, August.</p> <p>11 Q. And did -- what specifically did Mr.</p> <p>12 Taylor discuss with you about that?</p> <p>13 A. Mostly confirming it, and we joked how we</p> <p>14 had a deadline and we were up 'til 3 in the morning</p> <p>15 finishing it.</p> <p>16 Q. I see. Anything else about that you can</p> <p>17 recall of your conversation with Mr. Taylor?</p> <p>18 A. No.</p> <p>19 Q. What con -- what conversation did you</p> <p>20 have -- is it Miss Pence-Leav, Miss Pence-Levy?</p> <p>21 A. Miss -- Ms. Pence-Levy, P-E-N-C-E -</p> <p>22 L-E-V-Y, Melissa.</p>
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<p>1 THE WITNESS: Oh, I'm sorry. (Tendering</p> <p>2 document).</p> <p>3 (Exhibit Fishman 002 was</p> <p>4 marked for ID)</p> <p>5</p> <p>6 BY MS. ST. PETER-GRIFFITH::</p> <p>7 Q. Okay, sir, going back to your</p> <p>8 communications with Mr. Taylor, did you have any other</p> <p>9 communications with Mr. Taylor?</p> <p>10 A. Can you re --</p> <p>11 Q. Sure.</p> <p>12 A. -- restate what you have so far that I've</p> <p>13 said I said?</p> <p>14 Q. Sure. You discussed two things with</p> <p>15 Mr. Taylor, the communications with Mr. Fischer and</p> <p>16 Mr. Tootell --</p> <p>17 A. Right.</p> <p>18 Q. -- and the operations or commercial advice</p> <p>19 for the H -- for HPD when he held the position before</p> <p>20 you did from '91 through '95?</p> <p>21 A. Right. And then I would add a third</p> <p>22 thing, which was the operating guidelines. We worked</p>	<p>1 Q. Okay, and what did you --</p> <p>2 A. You can tell I've dictated documents</p> <p>3 before.</p> <p>4 Q. What do you recall about your conversation</p> <p>5 with Ms. Pence-Levy?</p> <p>6 A. My conversation with Ms. Pence-Levy</p> <p>7 pertained to the questions -- the issues that Mike</p> <p>8 Tootell apparently raised in deposition testimony</p> <p>9 regarding concerns, specific concerns he had about</p> <p>10 AWP.</p> <p>11 Q. And what did you dis -- what did Miss</p> <p>12 Pence-Levy discuss with you about that?</p> <p>13 A. She reminded me that she came onboard in</p> <p>14 May time frame of 2003.</p> <p>15 Q. Oh.</p> <p>16 A. So any conversations that would have been</p> <p>17 prior to that, she can't talk to at all, but she had</p> <p>18 no recollection of Mike coming to her regarding that</p> <p>19 subject -- regarding AWP subject matter in any</p> <p>20 concerned way.</p> <p>21 Q. Do you recall any -- did you discuss</p> <p>22 anything else with Miss Pence-Levy?</p>

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<p>1 information to customers.</p> <p>2 Q. If HPD employees provided AWP information</p> <p>3 or AWP spread information to customers, would that</p> <p>4 have violated any Abbott policy that was in place from</p> <p>5 1991 to 2000?</p> <p>6 MS. CITERA: Objection to the form, outside the</p> <p>7 scope.</p> <p>8 MS. ST. PETER-GRIFFITH: It's not outside the</p> <p>9 scope. It's directly on point.</p> <p>10 THE WITNESS: '91 to 2000? What time frame did</p> <p>11 you --</p> <p>12</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. '91 to 2000.</p> <p>15 MS. CITERA: Same objections.</p> <p>16 THE WITNESS: There -- to my knowledge, there</p> <p>17 was not a formal policy pertaining to AWP. There was</p> <p>18 a practice. And whether or not they violated it, it</p> <p>19 sounds to me violation is a conclusion of reviewing</p> <p>20 facts in relation to -- in relation to legal analysis.</p> <p>21</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p>1 MS. CITERA: Objection. Are you done?</p> <p>2</p> <p>3 BY MS. ST. PETER-GRIFFITH::</p> <p>4 Q. -- that it might have violated</p> <p>5 Medicare/Medicaid fraud and abuse abuse statutes?</p> <p>6 MS. CITERA: Objection to the form, outside the</p> <p>7 scope.</p> <p>8 THE WITNESS: Abbott had -- took compliance</p> <p>9 very seriously and evaluated its -- its activities</p> <p>10 regularly, and conduct that may have raised concerns</p> <p>11 or questions about their legality would have caused</p> <p>12 Abbott to be concerned.</p> <p>13</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Okay, was Abbott concerned?</p> <p>16 MS. CITERA: Objection to the form, outside the</p> <p>17 scope.</p> <p>18 MS. ST. PETER-GRIFFITH: It's not outside the</p> <p>19 scope, but go ahead.</p> <p>20 MS. CITERA: You're asking him to give</p> <p>21 opinions.</p> <p>22 MS. ST. PETER-GRIFFITH: I am not asking him --</p>
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<p>1 Q. Well, if some -- if someone within HPD</p> <p>2 during the time frame from 1991 to 2000 provided</p> <p>3 spread marketing information, AWP information, AWP</p> <p>4 spread information to customers, would that violate</p> <p>5 Medicare and Medicaid fraud and abuse statutes?</p> <p>6 MS. CITERA: Objection.</p> <p>7 THE WITNESS: You're asking me for a legal</p> <p>8 conclusion.</p> <p>9 MS. CITERA: He's not here to talk -- he's not</p> <p>10 here to give legal conclusions.</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. I want to know, from Abbott's viewpoint,</p> <p>13 was that -- was that a violation of any statute?</p> <p>14 A. That's a legal conclusion --</p> <p>15 MS. CITERA: Objection to form, outside the</p> <p>16 scope.</p> <p>17 THE WITNESS: -- that I'm not prepared to</p> <p>18 answer today.</p> <p>19</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Okay. Did Abbott have a concern that it</p> <p>22 might have violated --</p>	<p>1 I am asking him about Abbott's concerns. He is here</p> <p>2 to testify today on behalf of Abbott.</p> <p>3 MS. CITERA: Not as to this area.</p> <p>4 THE WITNESS: Abbott was generally con -- was</p> <p>5 generally concerned and took very -- and worked very</p> <p>6 hard at addressing fraud and abuse issues.</p> <p>7</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. Okay, what did Abbott do -- let's start</p> <p>10 there. You said that Abbott took compliance</p> <p>11 seriously.</p> <p>12 A. (Witness nodding).</p> <p>13 Q. What did Abbott do for the time period</p> <p>14 from 1991 to 2001 to ensure that Medicaid and Medicare</p> <p>15 statute -- fraud and abuse statutes were not violated</p> <p>16 and regulations?</p> <p>17 MS. CITERA: Objection to, form.</p> <p>18 THE WITNESS: Multiple -- what time frame</p> <p>19 again, '91 to when?</p> <p>20</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. 2001.</p>

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<p>1 A. To my knowledge, and we spent time trying</p> <p>2 to investigate this without a satisfactory answer, a</p> <p>3 certainty, it's almost proving -- again, proving the</p> <p>4 negative whether there was an interim Code of Business</p> <p>5 Conduct that was issued between '93 and '99. To --</p> <p>6 through a series of inquiries, none exists. So it</p> <p>7 would have been added for the October '99 version.</p> <p>8 Q. Okay, because the '93 version didn't have</p> <p>9 one?</p> <p>10 A. Correct.</p> <p>11 Q. And that's the one signed by Dwayne</p> <p>12 Burnham?</p> <p>13 A. If it was signed by the CEO, then that</p> <p>14 would be correct.</p> <p>15 Q. Okay. And it's -- I'm trying to get you a</p> <p>16 copy, but it's substantially shorter than -- probably</p> <p>17 about half as long; is that fair?</p> <p>18 A. Ah --</p> <p>19 Q. We'll look at it.</p> <p>20 A. -- I can't make that determination.</p> <p>21 Q. That's okay, we'll look at it. Sir, what</p> <p>22 prompted Abbott to include this section in its Code of</p>	<p>1 Q. Okay, when you say "the external</p> <p>2 environment," do you mean that there was more</p> <p>3 enforcement of Medicare?</p> <p>4 A. There's more enforcement, there's more</p> <p>5 attention, there was more resources, there was --</p> <p>6 again, there was some more settlements, so there was</p> <p>7 more understanding of what -- how these laws and</p> <p>8 regulations were being applied and what the concerns</p> <p>9 of the enforcement agencies were. I think in '93,</p> <p>10 there was a lot less known about it than in '99.</p> <p>11 Q. Okay, well, could Abbott have done</p> <p>12 something to clarify -- well, let me ask you -- strike</p> <p>13 that.</p> <p>14 Was Abbott confused about how</p> <p>15 Medicare or Medicaid fraud and abuse statutes applied</p> <p>16 with regard to AWP pricing, spread and spread</p> <p>17 marketing?</p> <p>18 MS. CITERA: Objection to form, outside the</p> <p>19 scope.</p> <p>20 MS. ST. PETER-GRIFFITH: It's not outside the</p> <p>21 scope.</p> <p>22 THE WITNESS: When? What time frame are you</p>
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<p>1 Business Conduct?</p> <p>2 A. I believe that --</p> <p>3 MS. CITERA: Objection to form.</p> <p>4 THE WITNESS: This is speculation in some</p> <p>5 regards because I don't have it. No one told me</p> <p>6 specifically why it was added. What appears obvious</p> <p>7 to me is the difference between 1993 and 1999 was the</p> <p>8 environment which the subject matter existed.</p> <p>9</p> <p>10 BY MS. ST. PETER-GRIFFITH:</p> <p>11 Q. When you say the -- what do you mean by</p> <p>12 that?</p> <p>13 A. I mean the enforcement environment, the</p> <p>14 '93 I think the safe harbors would have just come out,</p> <p>15 and I think they were even revised, provided a little</p> <p>16 bit more information. So there was relatively little</p> <p>17 formal pronouncement and guidance regarding the</p> <p>18 statute in '9 -- in 1993, and it became a</p> <p>19 particularly -- again, in attempting to address</p> <p>20 compliance matters, as the external environment</p> <p>21 changes around you, you, you know, address the</p> <p>22 external environment.</p>	<p>1 talking about?</p> <p>2</p> <p>3 BY MS. ST. PETER-GRIFFITH:</p> <p>4 Q. Pre-1999. Fair question.</p> <p>5 MS. CITERA: Same objections.</p> <p>6 THE WITNESS: Were we confused? Abbott --</p> <p>7 Abbott had a -- an understanding of the law as written</p> <p>8 and continued to gain insight into the interpretation</p> <p>9 of the laws and the regulations and the safe -- the</p> <p>10 safe harbor regulations in particular as more</p> <p>11 attention was placed on it and more information</p> <p>12 became -- became available.</p> <p>13</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Became available from who?</p> <p>16 A. Publicly.</p> <p>17 Q. Okay. Well, at any time did Abbott go to</p> <p>18 either HHS OIG or HCFA and ask for clarification about</p> <p>19 whether or not it was permissible to maintain</p> <p>20 excessively high spreads -- when I say "high spreads,"</p> <p>21 I mean a hundred percent or more to a thousand percent</p> <p>22 to two thousand percent -- on its drug products or to</p>

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<p>1 market the spread and provide spread information to 2 its customers? 3 MS. CITERA: Objection to the form, outside the 4 scope. 5 MS. ST. PETER-GRIFFITH: It's not outside the 6 scope. 7 THE WITNESS: You've asked a lot of questions 8 there. 9 10 BY MS. ST. PETER-GRIFFITH: 11 Q. Okay, well, I can break it down for you, 12 okay? 13 A. (Witness nodding). 14 Q. Okay, let's do this. At any time did 15 Abbott go to HCFA or HHS OIG to ask about its pricing 16 activities and whether or not it was in compliance 17 with health -- Medicaid and Medicare fraud and abuse 18 statutes? 19 MS. CITERA: Same objections. 20 THE WITNESS: No, not to my knowledge. 21 22 BY MS. ST. PETER-GRIFFITH:</p>	<p>1 if you try to follow me from one question to another, 2 we could all get real confused -- 3 A. Okay. 4 Q. -- okay? So don't necessarily believe 5 that it flows. I just want you to answer the 6 question -- 7 A. Okay. 8 Q. -- that's pending before you. 9 A. Okay. What -- which is? 10 MS. CITERA: Do you need the question read 11 back? 12 THE WITNESS: Yeah. The question is? 13 MS. ST. PETER-GRIFFITH: Can you read it back, 14 please? 15 THE REPORTER: Okay. 16 (Record read.) 17 MS. CITERA: Same objections. 18 THE WITNESS: Hum? 19 MS. CITERA: No -- 20 THE WITNESS: Same objections? Okay. 21 MS. CITERA: -- I was just saying, "Same 22 objections."</p>
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<p>1 Q. Okay, why not? 2 MS. CITERA: Same objections. 3 THE WITNESS: You're asking me to speculate as 4 to why they didn't do something? 5 6 BY MS. ST. PETER-GRIFFITH: 7 Q. I'm asking -- it's not "they." You -- 8 you're sitting here today as Abbott. I'm asking why 9 Abbott didn't go to HHS OIG or to HCFA to ask about 10 its compliance in its pricing and its AWP activities? 11 MS. CITERA: Same objections. 12 THE WITNESS: I don't -- the premise of this 13 was whether there was any confusion, and I'm not 14 certain it's fair to assume that there was confusion. 15 Perhaps the premise of your question was why was 16 Abbott -- was Abbott confused? 17 18 BY MS. ST. PETER-GRIFFITH: 19 Q. I'm on a different question now, sir. 20 A. But it's -- I know, but these questions 21 are -- appeared to me to be following one another. 22 Q. Well, sir, I just want you to -- trust me,</p>	<p>1 THE WITNESS: I hear that question as assuming 2 that we needed clarification. 3 BY MS. ST. PETER-GRIFFITH: 4 Q. Well, did you need clarifications? 5 A. Not to my knowledge. 6 MS. CITERA: Same objections. 7 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Okay, did you have an understanding as to 10 whether the maintenance of spreads on certain Abbott 11 HPD products of a hundred percent or more to a 12 thousand percent, sometimes two thousand percent was 13 permissible under the federal, state and -- federal 14 and state Medicaid and Medicare fraud and abuse 15 statutes? 16 A. That -- that clearly -- 17 MS. CITERA: Wait, can I -- 18 THE WITNESS: Oh, sorry. 19 MS. CITERA: Objection to form, outside the 20 scope. He's not here to say what's legal or illegal. 21 MS. ST. PETER-GRIFFITH: I'm not asking him 22 what's legal.</p>

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<p>1 THE WITNESS: You said "permissible." 2 MS. ST. PETER-GRIFFITH: I'm asking him what 3 Abbott's understanding is. 4 THE WITNESS: But that's a legal conclusion. 5 Whether something is permissible under statute is a 6 legal conclusion. 7 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Did Abbott believe it? I'm asking what 10 Abbott understood. 11 MS. CITERA: Same objections. 12 THE WITNESS: But it's a legal conclusion. 13 14 BY MS. ST. PETER-GRIFFITH: 15 Q. I want -- I want you to tell me whether or 16 not Abbott understood that its maintenance of 17 spreads -- whether its maintenance of spreads was 18 violative of the Medicare and Medicaid fraud and abuse 19 statutes? 20 MS. CITERA: Same objections. 21 THE WITNESS: I'm not prepared to respond to 22 that question. I'm not prepared for that question. I</p>	<p>1 spreads of a hundred to a thousand percent or more or 2 any excessive spread was permissible? 3 MS. CITERA: Objection to the form, outside the 4 scope. 5 THE WITNESS: To my knowledge, Abbott did not 6 make any inquiry regarding any spread regardless of 7 what the percent was. 8 9 BY MS. ST. PETER-GRIFFITH: 10 Q. Did Abbott make any inquiry concerning 11 whether it was permissible to provide customers with 12 spread information or AWP information? 13 A. Inquiry of whom? 14 MS. CITERA: Objection. 15 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Inquiry of any state or federal Medicaid 18 or Medicare official. 19 MS. CITERA: Objection to form, outside the 20 scope. 21 THE WITNESS: Not to my knowledge, but I would 22 reiterate it was the practice not to do that.</p>
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<p>1 believe it's a -- calling for a legal conclusion. 2 MS. ST. PETER-GRIFFITH: Sir, you need to 3 answer the question. 4 MS. CITERA: He's answered the question. 5 THE WITNESS: I believe you're calling -- 6 MS. ST. PETER-GRIFFITH: He -- he hasn't 7 answered the question. 8 MS. CITERA: He cannot -- I mean he's not here 9 to testify about what's legal or illegal. 10 MS. ST. PETER-GRIFFITH: I'm not asking about 11 what -- 12 MS. CITERA: I think you are. 13 MS. ST. PETER-GRIFFITH: I'm asking his 14 under -- Abbott's understanding. 15 MS. CITERA: But that -- the premise of the 16 understanding is whether or not it violated the law, 17 and that's a legal conclusion. He's not here to 18 testify about what's legal or illegal. 19 20 BY MS. ST. PETER-GRIFFITH: 21 Q. Did Abbott undertake any initiative to 22 ascertain whether or not its practices in maintaining</p>	<p>1 2 BY MS. ST. PETER-GRIFFITH: 3 Q. Why was it the practice not to do that? 4 A. Because that was -- that was the business 5 operating procedure that Abbott elected to adhere to. 6 Q. And you say it was the practice not to do 7 what? 8 A. Not to provide AWP information to 9 customers, which is what the nature of the question 10 was. 11 Q. Okay, but, sir, are you aware that 12 Abbott -- we have testimony from a whole slew of 13 witnesses that they did undertake that activity? 14 MS. CITERA: I Object to that commentary. 15 THE WITNESS: I only know that you've told me 16 that. 17 MS. ST. PETER-GRIFFITH: Okay. 18 THE WITNESS: I have not seen that testimony. 19 So I can't say that, yes, I'm aware of that. 20 21 BY MS. ST. PETER-GRIFFITH: 22 Q. So you didn't take -- undertake any</p>

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<p>1 less, but I don't have to document them.</p> <p>2 MS. ST. PETER-GRIFFITH: Oh, I -- I don't doubt</p> <p>3 that.</p> <p>4</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. Sir, did Abbott -- for purposes of</p> <p>7 evaluating its HPD Medicaid/Medicare fraud and abuse</p> <p>8 compliance obligations, did Abbott ever consider</p> <p>9 whether it's pricing and its decision to report prices</p> <p>10 that created spreads of fifty, a hundred, a thousand</p> <p>11 percent or more implicated Medicaid or Medicare fraud</p> <p>12 and abuse?</p> <p>13 MS. CITERA: Objection to the form.</p> <p>14 THE WITNESS: In the presen -- in the training</p> <p>15 environment that I op -- that I operated in and other</p> <p>16 Commercial Attorneys operated in, AWP and pricing was</p> <p>17 not something that we addressed.</p> <p>18 Again, back to -- I think I said</p> <p>19 earlier, to the extent questions may have come in to</p> <p>20 me about AWP, we would have referred them to</p> <p>21 Litigation.</p> <p>22</p>	<p>1 Q. Who would undertake that evaluation on</p> <p>2 behalf of Abbott?</p> <p>3 A. The Legal Department.</p> <p>4 Q. Anyone else?</p> <p>5 A. They -- no one else should.</p> <p>6 Q. Did Abbott's Legal Department ever</p> <p>7 undertake that evaluation?</p> <p>8 MS. CITERA: Objection to form, also objection</p> <p>9 to the extent it seeks privileged communications,</p> <p>10 outside the scope.</p> <p>11 THE WITNESS: To my knowledge -- to my</p> <p>12 knowledge, the Commercial -- the Commercial lawyers</p> <p>13 did not. I don't know whether the Litigation</p> <p>14 attorneys did.</p> <p>15</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. Who would know that?</p> <p>18 A. Whoever was the head of Litigation.</p> <p>19 Q. Did you do anything to ascertain what</p> <p>20 steps may have been taken to confirm Abbott's pricing</p> <p>21 practice -- that confirmed that Abbott's pricing</p> <p>22 practices were in conformity with Medicare and</p>
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<p>1 BY MS. ST. PETER-GRIFFITH:</p> <p>2 Q. Did Litigation give any presentations</p> <p>3 concerning pricing or AWP?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Why not?</p> <p>6 A. I mean I can't answer why they didn't.</p> <p>7 Q. Did anyone within Abbott ever evaluate</p> <p>8 whether or not its maintenance of spreads between what</p> <p>9 it was actually selling to customers and its AWP's were</p> <p>10 violative of Medicare or Medicaid fraud and abuse</p> <p>11 laws?</p> <p>12 MS. CITERA: Objection to the form, outside the</p> <p>13 scope.</p> <p>14 THE WITNESS: Any analysis that would or</p> <p>15 wouldn't have occurred would be a legal privilege.</p> <p>16 MS. CITERA: Also privileged.</p> <p>17</p> <p>18 BY MS. ST. PETER-GRIFFITH:</p> <p>19 Q. Why would it be a legal privilege? I'm</p> <p>20 asking whether Abbott ever undertook that evaluation.</p> <p>21 A. I don't know whether they undertook that</p> <p>22 evaluation.</p>	<p>1 Medicaid fraud and abuse statutes within the</p> <p>2 Litigation Department?</p> <p>3 MS. CITERA: Objection to form.</p> <p>4 THE WITNESS: I did not have a conversation</p> <p>5 with Litigation.</p> <p>6</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. In 2001, did Abbott reduce its list prices</p> <p>9 on certain HPD products for any reason pertaining to</p> <p>10 Medicare or Medicaid fraud and abuse laws?</p> <p>11 MS. CITERA: Objection to the form, outside the</p> <p>12 scope.</p> <p>13 THE WITNESS: Not to my knowledge.</p> <p>14</p> <p>15 BY MS. ST. PETER-GRIFFITH:</p> <p>16 Q. Okay, sir, we left off with you learned</p> <p>17 laws through -- is there anything else -- other than</p> <p>18 the presentations that you've described when you said</p> <p>19 that we do not have all of them in front of us --</p> <p>20 A. I have to assume that these are not all of</p> <p>21 them because most -- many of the -- I don't know if</p> <p>22 things dated -- things that were given in 1994 would</p>

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<p>1 Q. I see, okay. So 36 then is the Hospital 2 Products Division operating guide? 3 A. I have 34. 4 Q. 34? 5 A. I mean that's the one I pulled out. 6 MS. CITERA: 34 and 36 is what he said. 7 MS. ST. PETER-GRIFFITH: Okay. 8 THE WITNESS: I can -- and I'm looking at both 9 34 and 36, which -- 10 MS. CITERA: There's also 37. 11 THE WITNESS: I have 34, 36 and 37 out. 12 13 BY MS. ST. PETER-GRIFFITH: 14 Q. Okay. And let me ask you were -- after 15 they were drafted in '99, were they subsequently 16 revised at any time? 17 A. They were never -- they were not 18 revised -- they were not revised. 19 Q. Okay. I'd like you just to take document 20 No. 34 -- 21 A. Yes. 22 Q. -- and turn to Page 14.</p>	<p>1 MS. CITERA I'm also going to object to it's 2 outside the scope. 3 MS. ST. PETER-GRIFFITH: How is it outside the 4 scope, Toni? It pertains directly to Topic 8 -- I'm 5 sorry, Topic 7, Section II. 6 MS. CITERA: Whether or not there were calls I 7 see as outside the scope. The fact that there was a 8 call line is something else. 9 THE WITNESS: Did -- I'm sorry, was your 10 question did they call the General Counsel's office or 11 did they call Legal? I heard, Did you call Legal 12 about False Claims Act questions? 13 14 BY MS. ST. PETER-GRIFFITH: 15 Q. Is there a difference between the General 16 Counsel's Office and Legal? 17 A. The published number in the Code of 18 Business Conduct was for any concerns you had about 19 any of the matters, and it went to the General 20 Counsel's Office. It was a corporate-wide 21 opportunity. 22 The -- what I heard and what I was</p>
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<p>1 A. Okay. 2 Q. Prior to the implementation of this 3 particular operating guideline for HPD, at any place 4 was there a resource that HPD employees could go to 5 for a discussion of the Federal False Claims Act 6 compliance other than the '99 Code of Business Conduct 7 and this document? 8 A. An internal document? 9 Q. Yes. 10 A. No. They always were welcome to contact 11 Legal directly and they were encouraged to do so, and 12 there was the -- from the Code of Business Conduct, a 13 central number to call if there was something that 14 they felt was worthy of going that route. 15 Q. Did anyone ever call the Legal Department 16 with questions concerning the Federal False Claims 17 Act's compliance? 18 MS. CITERA: Objection to the form, and I would 19 also instruct you not to reveal any privileged 20 conversations. 21 THE WITNESS: Oh, God, it's such a broad 22 question.</p>	<p>1 contemplating was did any of my clients, any of the 2 people I worked with in HPD ever call me or call Legal 3 to ask Federal False Claims Act questions. 4 Q. That's my question, sir. 5 MS. CITERA: Same objections and instruction. 6 THE WITNESS: The -- given the breadth of the 7 question, I'd say yes. 8 9 BY MS. ST. PETER-GRIFFITH: 10 Q. Okay, what particular areas did they 11 inquire about? 12 MS. CITERA: Again, same objections, same 13 instruction. 14 THE WITNESS: I believe the content of the 15 inquiry would be privileged conversation. 16 MS. ST. PETER-GRIFFITH: Well, Toni, do you 17 intend to rely upon an advice of counsel defense in 18 this case? 19 MS. CITERA: I'm not going to answer that. I'm 20 instructing him not to answer to the extent that it 21 would reveal privileged conversations. 22</p>

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<p>1 MS. CITERA: Objection to the form.</p> <p>2 THE WITNESS: All people were required to</p> <p>3 follow Medicare and Medicaid fraud and abuse laws.</p> <p>4</p> <p>5 BY MS. ST. PETER-GRIFFITH:</p> <p>6 Q. And that's true for those individuals that</p> <p>7 worked with Abbott's AWP's?</p> <p>8 A. That would be --</p> <p>9 MS. CITERA: Objection to form.</p> <p>10 THE WITNESS: That would be true of all</p> <p>11 employees.</p> <p>12</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Okay. And from any time including from</p> <p>15 1991 to the 2000?</p> <p>16 MS. CITERA: Objection to form.</p> <p>17 THE WITNESS: It would be as long as the law</p> <p>18 was in effect, which even predated '91, but yes.</p> <p>19</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Okay. If that's the case, how did Abbott</p> <p>22 as a matter of policy permit its list or catalog</p>	<p>1 A. I --</p> <p>2 MS. CITERA: Objection to form, outside the</p> <p>3 scope to the extent you're asking him to give a legal</p> <p>4 opinion.</p> <p>5 THE WITNESS: I believe when you talk about</p> <p>6 whether a particular activity is implicated by a</p> <p>7 statute, you're asking me to reach a legal conclusion.</p> <p>8</p> <p>9 BY MS. ST. PETER-GRIFFITH:</p> <p>10 Q. Well, did Abbott consider Medicaid and</p> <p>11 Medicare compliance in its decision making concerning</p> <p>12 the business practice of setting its annual catalog</p> <p>13 and list prices and decreasing its market product</p> <p>14 prices?</p> <p>15 MS. CITERA: Same objections.</p> <p>16 THE WITNESS: Abbott considered compliance with</p> <p>17 all laws in -- in each of its activities that it would</p> <p>18 have conducted.</p> <p>19</p> <p>20 BY MS. ST. PETER-GRIFFITH:</p> <p>21 Q. Okay, what did it do to evaluate</p> <p>22 compliance with Medicaid and Medicare laws in the</p>
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<p>1 prices to receive annual price increases on drugs when</p> <p>2 the market prices decreased?</p> <p>3 MS. CITERA: Objection to the form, outside the</p> <p>4 scope.</p> <p>5 MS. ST. PETER-GRIFFITH: It's not outside the</p> <p>6 scope.</p> <p>7 THE WITNESS: That's -- that would be a</p> <p>8 business decision, and I couldn't address pricing that</p> <p>9 I'm aware of was tied to CPI.</p> <p>10</p> <p>11 BY MS. ST. PETER-GRIFFITH:</p> <p>12 Q. Okay, pricing -- what pricing?</p> <p>13 A. Pricing generally.</p> <p>14 Q. List pricing, catalog pricing?</p> <p>15 A. Well, price -- the business practice was</p> <p>16 looking at pricing and considering CPI is what I</p> <p>17 understand.</p> <p>18 Q. Okay, were there any implications</p> <p>19 concerning Abbott policy and Abbott's policy that</p> <p>20 employees comply with Medicare and Medicaid fraud and</p> <p>21 abuse statutes implicated through that business</p> <p>22 practice of pricing?</p>	<p>1 context of its decision to increase annually its</p> <p>2 listing catalog prices, while at the same time it was</p> <p>3 decreasing its prices to its customers?</p> <p>4 MS. CITERA: The same objections, and also I</p> <p>5 would caution you not to reveal any privileged</p> <p>6 discussions.</p> <p>7 THE WITNESS: Could you -- I'm not -- what's</p> <p>8 the -- what the kind of predicate of the question? I</p> <p>9 understand -- would you repeat the question?</p> <p>10 THE REPORTER: Sure.</p> <p>11 (Record read.)</p> <p>12 THE WITNESS: I believe an evaluation of</p> <p>13 compliance with laws is what lawyers do, and I think</p> <p>14 that's privileged, a privileged conclusion.</p> <p>15</p> <p>16 BY MS. ST. PETER-GRIFFITH:</p> <p>17 Q. I want to know what Abbott did.</p> <p>18 MS. CITERA: Same objections, same instruction.</p> <p>19 THE WITNESS: Abbott through the conduct of its</p> <p>20 Legal Department would have been making legal</p> <p>21 determination of compliance with law, and that</p> <p>22 conclusion is privileged.</p>

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<p>1 2 BY MS. ST. PETER-GRIFFITH: 3 Q. Why is that conclusion privileged? 4 A. Because it's a legal conclusion. 5 MS. CITERA: Objection to form. 6 THE WITNESS: And I -- 7 8 BY MS. ST. PETER-GRIFFITH: 9 Q. Okay, it's not a privileged communication, 10 right? 11 MS. CITERA: Objection to the form. He -- 12 you're asking him legal questions as to -- 13 MS. ST. PETER-GRIFFITH: I'm not asking him 14 legal questions. I'm asking him what's the predicate 15 for Abbott's -- its continuing this policy. 16 MS. CITERA: I don't think that's the question 17 you just asked. 18 THE WITNESS: That's not the question. 19 MS. ST. PETER-GRIFFITH: Yes, it is the 20 question. 21 THE WITNESS: You asked me what evaluation did 22 we do to -- to assure compliance with the laws.</p>	<p>1 Q. Was one done? 2 A. Whether -- whether Legal -- whether an 3 analysis and evaluation was was done is a legal con -- 4 is also legal -- privileged. 5 Q. No, I want to know, yes or no, was an 6 evaluation done? 7 A. When, in '91 to 2001? 8 Q. Yes. 9 MS. CITERA: Objection to the form and outside 10 the scope. 11 THE WITNESS: And just so I -- I would 12 appreciate the scope of what we're talking about. 13 What aspect of fraud -- Medicaid fraud and abuse are 14 we talking about? 15 16 BY MS. ST. PETER-GRIFFITH: 17 Q. Any. 18 A. Any aspect of Medicare fraud and abuse? 19 Yes, there was evaluations done. 20 Q. Okay, what evaluations were done with 21 regard to Abbott's compliance with Medicare or 22 Medicaid fraud and abuse statutes in the context of</p>
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<p>1 MS. ST. PETER-GRIFFITH: Right. 2 THE WITNESS: And that's a legal conclusion. 3 4 BY MS. ST. PETER-GRIFFITH: 5 Q. No, I'm asking you what did you -- what 6 did Abbott do to evaluate whether its pricing 7 practices complied with Medicaid and Medicare fraud 8 and abuse laws? That's not a legal question. 9 MS. CITERA: Any evaluation would be 10 privileged. 11 MS. ST. PETER-GRIFFITH: I want to know what 12 you did. 13 MS. CITERA: Any evaluation would be privileged 14 that was done by the Legal Department. 15 MS. ST. PETER-GRIFFITH: All right, the witness 16 can answer for himself, Toni. 17 THE WITNESS: That -- I thought that's what I 18 said, which is to the extent, we -- there was an -- an 19 evaluation was done, it would have -- it would have 20 been -- 21 22 BY MS. ST. PETER-GRIFFITH:</p>	<p>1 its decision to raise on an annual basis its list and 2 catalog prices, while at the same time, it was 3 decreasing its prices to customers? 4 MS. CITERA: Objection to the form, outside the 5 scope, and also the same caution about not revealing 6 privileged discussions. 7 THE WITNESS: I've answered the question 8 whether we did an evaluation. To what extent we did 9 an evaluation, I think is privileged. You asked me 10 what was the evaluation. 11 12 BY MS. ST. PETER-GRIFFITH: 13 Q. I'm asking you what was the eval -- I'm 14 asking what Abbott's evaluation was. 15 A. That, I think is a privileged conclusion. 16 MS. ST. PETER-GRIFFITH: Do you intend to rely 17 upon an advice of counsel defense? Do you? Do you, 18 Toni? 19 MS. CITERA: I told you that I'm not going to 20 answer that. 21 MS. ST. PETER-GRIFFITH: Because we're entitled 22 to discover this information.</p>

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<p>1 MS. CITERA: Same objections.</p> <p>2 THE WITNESS: -- a legal con -- a -- privileged</p> <p>3 information.</p> <p>4</p> <p>5 MS. ST. PETER-GRIFFITH:</p> <p>6 Q. How is that asking for privileged</p> <p>7 information? I'm asking what Abbot did.</p> <p>8 A. Whether Legal of -- did a legal evaluation</p> <p>9 of a particular business practice?</p> <p>10 Q. Right.</p> <p>11 MS. CITERA: It's privileged.</p> <p>12 THE WITNESS: It's privileged.</p> <p>13</p> <p>14 BY MS. ST. PETER-GRIFFITH:</p> <p>15 Q. Did anyone outside of the Legal Department</p> <p>16 do that -- make that evaluation?</p> <p>17 A. To the extent anybody -- as I stated</p> <p>18 before, to the extent anybody outside of Legal</p> <p>19 attempted to make a legal analysis, one, that was</p> <p>20 outside of their job description and shouldn't be</p> <p>21 doing it, and I have no reason to believe that anybody</p> <p>22 would rely on a non-legal -- a non-lawyer's evaluation</p>	<p>1 conclusion. He doesn't get to make that decision.</p> <p>2 MS. CITERA: Reveal the -- reveal the -- I mean</p> <p>3 reveal. Please reread the question.</p> <p>4 (Record read.)</p> <p>5 MS. CITERA: And -- okay, so how did it know</p> <p>6 that it was in compliance. And your question is?</p> <p>7 MR. ANDERSON: I don't have a question. He's</p> <p>8 repeatedly saying it calls for a legal conclusion and</p> <p>9 refusing to answer. There's no bases in the rules for</p> <p>10 such a --</p> <p>11 MS. ST. PETER-GRIFFITH: Are you -- are you</p> <p>12 instructing him not to answer?</p> <p>13 MS. CITERA: Well, A, he's not required to give</p> <p>14 a legal conclusion.</p> <p>15 MR. ANDERSON: We're not asking for a legal</p> <p>16 conclusion.</p> <p>17 MS. ST. PETER-GRIFFITH: We're not asking for a</p> <p>18 legal conclusion.</p> <p>19 MS. CITERA: But I'm just saying, let's get</p> <p>20 that straight. Second, to the extent that it's</p> <p>21 calling for any privileged conversations, he is saying</p> <p>22 that he's not going to answer that.</p>
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<p>1 of a legal analysis.</p> <p>2 Q. How did Abbott know that in raising its</p> <p>3 prices, its list and catalog prices on an annual basis</p> <p>4 it was in compliance with federal and state Medicare</p> <p>5 and Medicaid fraud and abuse statutes?</p> <p>6 MS. CITERA: Same objections and instructions.</p> <p>7 THE WITNESS: You're asking me for a legal</p> <p>8 conclusion.</p> <p>9 MS. ST. PETER-GRIFFITH: Do you intend to</p> <p>10 assert an advice of counsel defense?</p> <p>11 MS. CITERA: I'm not going to answer that.</p> <p>12 MR. ANDERSON: Well, you know, I've got to</p> <p>13 interject something. Are you instructing the witness</p> <p>14 not to answer because he -- he's not answering the</p> <p>15 question by just stating that it's a legal conclusion,</p> <p>16 but I don't hear an instruction not to answer. Yet</p> <p>17 he's not --</p> <p>18 MS. CITERA: I said, Same objection and same</p> <p>19 caution.</p> <p>20 MR. ANDERSON: Yeah, you're cautioning him not</p> <p>21 disclose a privilege. He's not saying it's</p> <p>22 privileged. He saying it calls for a legal</p>	<p>1 MS. ST. PETER-GRIFFITH: Okay, I'm not -- what</p> <p>2 I'm asking is are you instructing him not to answer</p> <p>3 the question?</p> <p>4 MS. CITERA: I am instructing him not to reveal</p> <p>5 any privileged discussions.</p> <p>6 If there's any -- any part of that</p> <p>7 question that you could answer that doesn't deal with</p> <p>8 privileged communications and discussions, then you</p> <p>9 can answer it.</p> <p>10 THE WITNESS: How we knew whether we were</p> <p>11 complying with the law is a legal analysis. How does</p> <p>12 anyone know that they're complying with the law? They</p> <p>13 have to make an illegal analysis and compare facts and</p> <p>14 law and conclude whether or not the facts fit within</p> <p>15 the law.</p> <p>16</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. And what did Abbott do?</p> <p>19 MS. CITERA: Same objections, form and outside</p> <p>20 the scope, same caution.</p> <p>21 THE WITNESS: I think I have the same answer.</p> <p>22 It's the same answer as I --</p>